***HON'BLE SRI JUSTICE P.S. NARAYANA**

**+WRIT PETITION NO.18104 of 2006**

%01-09-2006

#Jitender Chottai and another.

.....
PETITIONERS

VERSUS

$ Municipal Corporation of Hyderabad,
Represented by its Commissioner,
Tank Bund, Hyderabad and another.

**.....RESPONDENTS**

**< GIST:**

**> HEAD NOTE:**

!Counsel for Petitioners**: Smt. Kavita Gottipati.**

**^Counsel for Respondents: Sri Rama Rao Ghanta.**

**? Cases referred**
**2001(3) ALT 200.**

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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Dated: 01.09.2006

Between:

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WRIT PETITION NO.18104 of 2006

ORDER:

Heard both the learned counsel.

2. The matter is coming up for admission. Sri Ghanta Rama Rao takes notice on behalf of the respondents.

3. The learned counsel for the writ petitioners' states that in the light of the orders made by this Court in Writ Petition No.14837 of 2006, dated 20.7.2006, and also in the light of the directions issued therein, this Writ Petition may also be disposed of.

4. Sri Ghanta Rama Rao, learned counsel representing the respondents also would submit that in the light of the observations made and directions issued in paragraphs 6, 7 and 8 of the Writ Petition No.1437 of 2006 the present Writ Petition can be disposed of.

5. The Writ Petition is filed praying for a Writ of Mandamus declaring the action of the respondents in refusing to receive and process the application of the petitioners for building permission for construction of building in premises No.3-5-265, Vittal Wadi, Narayanaguda, Hyderabad, as it is not accompanied with No Objection Certificate and basing upon the entry in TSLR, as illegal, arbitrary and violative of principles of natural justice and consequently

direct the respondents to receive and process the application for building permission without insisting No Objection Certificate and without reference to entry in TSLR Certificate and pass such other suitable orders.

6. It is stated in the affidavit filed in support of the Writ Petition that the first petitioner is the absolute owner and possessor of the house property 150.50 square yards along with old house therein in premises No.3-5-265 (Mega City No.504) situated at Vittalwadi, Narayanaguda, Hyderabad, having purchased the same through registered sale deed dated 8.9.1997 bearing document No.1739 of 1997 from its lawful owners Smt.Shobana Hardikar and others. It is also stated that the 2nd petitioner purchased 87.50 square yards house site along with house therein in premises No.3-5-265 situated at Vittalwadi, Narayanaguda, through a registered sale deed dated 8.9.1997 bearing document No.1741 of 1997 from Shobana Hardikar and others. It is stated that the properties purchased by the first petitioner and the 2nd petitioner are adjacent to each other forming into a single plot admeasuring 238 square yards. It is further stated that the vendors of the petitioners inherited the house property from Srikanth Hardikar who got the same through a partition decree dated 31.12.1985 in OS.No.416 of 1984 by the II Additional District Judge, City Civil Court, Hyderabad. It is stated that originally the said property was purchased by one Ganesh Vaman Hardikar, who is the father of the parties to the suit in OS.No.416 of 1984 through a registered sale deed dated 30th Farvadi, 1341 Fasli, bearing document No.105 registered in Volume-I at pages 135 and 136 of Sub-Registrar, Charminar. It is also stated that the name of predecessor-in-interest was also recorded in the municipal records way back from 1.4.1965 and the names of the petitioners were also mutated in municipal records. It is further stated that the petitioners intend to construct a new house by demolishing the existing house,

which is aged more than 100 years, and for that purpose the petitioners approached the respondent-Corporation in the 1st week of August, 2006 with an application seeking building permission in the said property, but surprisingly the 2nd respondent, who is competent authority to receive the building application up to three floors, refused to receive the same on the pretext that the building application was not accompanied with No Objection Certificate issued by the revenue authorities and by saying that in TSLR, the petitioners' property was recorded as Government land and their request to receive and process the application went in vain. It is also stated that there is no requirement of production of No Objection Certificate either in Hyderabad Municipal Corporation Act or in the relevant building bye-laws, and this Court in catena of judgments repeatedly held that MCH has no authority to insist for production of No Objection Certificate along with the building application and it is further held an entry in the TSLR Certificate is not the sole ground to reject the building application. It is also stated that the respondents having suffered number of judgments on the point of law, again mechanically insisting the petitioners to produce No Objection Certificate along with the building application and refusing to receive the same basing on the entry in TSLR cannot be sustained. It is stated that the respondents under law are bound to receive and process their application without insisting No Objection Certificate and without reference to entry in TSLR and the action of the respondents is highly illegal, arbitrary and violative of principles of natural justice and as such the petitioners are forced to approach this Court.

7. Heard both the learned counsel.

8. As far as No Objection Certificate from revenue authorities is concerned, there cannot be any doubt or controversy whatsoever that it is not necessary. The only question that may have to be decided is in

relation to the entries in TSLR. As far as entries in TSLR are concerned, the learned Judge of this Court in HYDERABAD POTTERIES PVT. LTD. v. COLLECTOR, HYDERABAD DISTRICT AND ANOTHER[1] at para 20 observed as follows:

> "A bare reading of scheme of the A.P. Survey and Boundaries Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. There is no provision under the Act intending to make any detailed enquiries with regard to the right, title and interest of the persons in the land. It is neither the object nor the scheme of the said Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land Act, 1971, it is not a record of right. There is no such provision in the Andhra Pradesh Survey and Boundaries Act, 1923".

9. Reliance was also placed on the decision in Writ Appeal No.10961 of 2001, dated 24th December, 2001. In Writ Petition No.19763 of 2005, the learned Judge of this Court after referring to the decision in Hyderabad Potteries Pvt. Ltd. (1 supra) expressed the view that the action of the 4th respondent – Commissioner, Municipal Corporation of Hyderabad in not entertaining the petitioner's building permission based on entry in TSLR cannot be justified and accordingly the Writ Petition was disposed of directing the 4th respondent to entertain the petitioners' application for building permission and pass appropriate orders in accordance with the provisions of the Hyderabad Municipal Corporation Act and the Rules governing thereto. Hence, it is clear that the entries made in TSLR cannot be said to be the sole basis and the Corporation-authorities are bound to consider all the relevant documents and arrive at a conclusion. Hence, on that ground alone refusal to entertain the

application cannot be justified.

10. The Municipal Corporation Building Bye-Laws, 1981 in GO.Ms.No.905, Housing, Administration and Urban Development (M.A.), dated 7th August, 1981, were made in exercise of the powers conferred by Section 589 of Hyderabad Municipal Corporation Act, 1955 (Act II of 1956), the Governor of Andhra Pradesh had accorded sanctions to the building bye-laws approved by the General Body of the Municipal Corporation of Hyderabad in its Resolution No.561, dated ..March, 1981 and made by the said Corporation under the powers conferred by sub-Sections (2), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (20) and (48) of Section 586 of the said Act, in supersession of the Hyderabad Municipal Corporation (Building) Bye-Laws, 1972 issued with G.O.Ms.No.763, M.A., dated 4.10.1972 and published at page 128-193 of Part II of the Rules supplement in the Andhra Pradesh Gazette dated 24.5.1973, the same having been published in the manner specified in Section 58 of the said Act. Bye-Laws 4.2 deals with application for Building Permit and 4.2(v) dealing with ownership title, reads as under:

> "4.2(v). Every application for building permit shall be accompanied by the following as proof of ownership;
>
> (a) attested copy of the original sale/lease deed; and
>
> (b) attested copy of Revenue Survey Sheet/Municipal Survey Sheet with Mutation Record No.,; or
>
> (c) affidavit or other documents acceptable to the Commissioner, MCH."

As can be seen from clause (v) of Bye-law 4.2 of the Bye-Laws referred to supra several documents had been referred to including the affidavit or several documents acceptable to the Commissioner, MCH.

11. In the light of the same, refusal to receive or entertain the application merely on the ground of TSLR entries may not be sustainable in the event of the applicant being able to satisfy the ownership, title and legal possession in relation to the property in

question.

12. Therefore, in view of the same, the Writ Petition is disposed of with a direction to entertain the application of the petitioners for building permission in relation to the subject matter of the Writ Petition without insisting No Objection Certificate from the revenue authorities and further considering the other documents which may be placed along with the application relating to the title and possession and to dispose of the same in accordance with law.

13. With the above direction, the Writ Petition is disposed of. No costs.

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01.09.2006

SSR

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[1] 2001(3) ALT 200.